IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 299 OF 2000
WITH
CIVIL APPLICATION NO. 3780 OF 2000

Smt. Sushila Pralhad Jagdale
and anr. ..Appellants
Vs.
Smt. Umabai Shankar Nimbalkar
and 2 ors. ..Respondents

Mr. Ajay A. Joshi for appellants.
Mr. D.J. Deshmukh for respondent nos.1 to 3.

CORAM: B.H. MARLAPALLE, J.

Date : March 21, 2007.

P.C.:

1. Heard Mr. Joshi the learned counsel for the appellants-plaintiffs. The plaintiffs had instituted Regular Civil Suit No. 230 of 1989 for perpetual injunction restraining the defendants from obstructing their possession and enjoyment of the suit land in Gat No. 238. The defendants are the sons of Shankar, the brother of the plaintiffs' mother. The trial court noted in its decree dated 1/9/1995 that the plaintiffs' mother Janabai Gaikwad had purchased by way of sale deeds from Shankar the following lands from his holdings:-

(a) Survey No. 304 - 80 Ares

(b) Survey No. 302 - 1 Are.

(c) Survey No. 303 - 23 Ares

2. The trial court further noted that consolidation scheme was made applicable to the concerned village sometimes in the year 1968 and in the said consolidation the entire land located in these three Survey Nos.302 to 304 was consolidated in Gat No.238. While noting down that the land purchased by Janabai was not in excess of 1 H. 4 Ares from these old survey numbers the trial court referred to the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 and held that by way of consolidation order the plaintiffs were entitled for an injunction in respect of total land in Gate No.238, though in excess of 1 H. 4 Ares. The defendants had, therefore, filed Civil Appeal No. 107 of 1995, which came to be partly allowed by the learned IInd Additional District Judge at Padharpur vide his judgment and order dated 7/2/2000. The Lower Appellate Court while noting down the fact that from the old Survey Nos.302, 303 and 304 Janabai had purchased a total of 1 H. 4 Ares land

from Shankar on 15/6/1964, she could not be held to be owner of the total land in the consolidated Gat No. 238. There is no dispute between the parties that the land in Gat No.238 admeasured 1 H. and 28 Ares. The plaintiff did not place on record a copy of the sale deed in respect of the land admeasuring 2 acres from Survey No.304 and in the absence of the same document coming on record the demarcation of the remaining land from Survey No.304 could not be identified. At the same time, it is not disputed by the plaintiffs that the balance of 24 Ares land located in old Survey No.304 was not purchased by Janabai from Shankar at any time. The Lower Appellate Court, therefore, rightly referred to the Court Commissioner's report at Exh.33 and the map furnished along with the said report. The disputed land admeasuring 24 Ares in the old Survey No.304 was situated on the west side and it was quite independent and separate and, therefore, it could not be treated to be the part of the holdings of the plaintiffs. Therefore, the Lower Appellate Court recorded a finding that the remaining 24 Ares land in Gat No.238 could not be held to be part of the plaintiffs holdings though there was a consolidation of all the lands in terms of Gat No.238 and the

ownership of this 24 Ares land had remained with Shankar Nimbalkar, the predecessor of the defendants. This view taken by the Lower Appellate Court so as to modify the decree of the trial court cannot be termed as illegal or perverse. It is obvious that by filing a suit the plaintiffs were trying to become the owners of the remaining 24 Ares of the land which, in fact, was never in their ownership. The Lower Appellate Court rightly stepped in to correct the mistake committed by the trial court.

3. Hence, no substantial question of law arises from the impugned decree of the Lower Appellate Court for consideration in this second appeal and, therefore, it must fail at the threshold.

4. The appeal is dismissed in limine.

5. Civil Application No. 3780 of 2000 does not survive and the same shall stand disposed as such. Ad-interim orders stand vacated.

(B.H. Marlapalle,J.)